



CITY OF NEWPORT BEACH

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August 12, 2009

Mr. Christopher Calfee, Special Counsel
ATTN: CEQA Guidelines
California Resources Agency
1017 L Street, #2223
Sacramento, CA 95814

RECEIVED BY
Office of the Secretary

AUG 11 2009

RESOURCES AGENCY OF CALIFORNIA

Re: CEQA Guidelines amendment pursuant to SB 97

Dear Mr. Calfee,

Thank you for the opportunity to review and comment on the proposed amendment to the CEQA Guidelines regarding the mitigation of greenhouse gas emissions. The City of Newport Beach appreciates the efforts by both your organization and the Office of Planning and Research in order to implement these important changes. The City of Newport Beach supports the revision of CEQA Guidelines to include the mitigation of greenhouse gas emissions and has the following comments for your consideration.

The City is concerned about the unintended consequences due to the lack of thresholds of significance and the introduction of uncertainty into the CEQA process. The increased need to prepare EIRs and the delays and increased costs to process applications may be an impediment to responsible development.

The City would like to work toward a regional approach, with region being defined as those areas within the jurisdiction of the Air Quality Management District (AQMD). The AQMD should take the lead in quantifying the region's emissions, setting quantifiable regional goals, and allocating the fair share overall reduction goals of the counties and/or cities. Because different areas contribute different amounts of GHG emissions depending on a variety of factors, such as the amount of industry and open space, a uniform 20 percent cut from each city will not achieve the state's goal. The AQMD should also provide models that cities and counties can use in establishing their local goals and guidelines.

The City has these comments regarding specific sections:

Section 15064.4 – Determining the Significance of Impacts from Greenhouse Gas Emissions

This new provision states that the lead agency should make a “good-faith effort” to estimate the amount of GHG emissions resulting from a project, and the agency has the discretion to use a model or to rely on a qualitative or performance based analysis.

This section directs but does not mandate the analysis and this critical difference is important given the uncertainty of thresholds. If a future threshold applies to projects below the general plan level (other than large projects, energy producers or sizable transportation projects), EIRs will be required for many projects currently exempt from CEQA;

Section 15093 – Statement of Overriding Considerations

The inclusion of subsection (d) of this section states that an agency may consider adverse environmental effects in the context of region-wide or statewide environmental benefits. Subsection (a) requires the decision-making agency to balance all other benefits of a proposed project against the unavoidable environmental risks of a project when determining whether to approve the project.

The City does not know what a region-wide or statewide environmental benefit of a significant increase in GHG emissions would be. The City is also concerned that the amendment may place too strong an emphasis on considering region-wide or statewide environmental benefits while de-emphasizing other considerable factors such as local environmental benefits or other non-environmental benefits;

Section 15126.4 – Consideration and Discussion of Mitigation Measures Proposed to Minimize Significant Effects

The proposed inclusion of subsection (c) of this section directs the lead agency to consider feasible means of mitigating GHG emissions. Subsection (c) is mandatory, which conflicts with Section 15064.4, which is not mandatory;

Section 15130 – Discussion of Cumulative Impacts

The addition of subsection (f) mandates a cumulative analysis of GHG emissions resulting from a proposed project. What is cumulatively considerable when greenhouse gas emissions are a global issue?;

Appendix F II – EIR Contents

The revision changes the wording from “should” to “shall” regarding the analysis of potential significant energy implications of a project. It also qualifies this analysis by adding “to the extent relevant and applicable to the project.”

What is a significant energy implication of a project and when is it “relevant” or “applicable”? This change would impose excessive analysis until what is “relevant and applicable” is determined. Furthermore, ambiguity typically leads to additional legal challenges;

Appendix G VII – Greenhouse Gas Emissions

This amendment poses the question “Would the project conflict with any applicable plan, policy or regulations of an agency adopted for the purpose of reducing the emissions of greenhouse gases?”

The term “an agency” is overly broad. What will the CEQA practitioner do if several agencies adopt different policies? Monitoring the specific provisions of future agency plans, policies, or regulations deemed applicable will be critical to administering CEQA locally;

Appendix G XVI – Transportation/Traffic (a)

The amendment deletes a reference to “an increase in traffic which is substantial in relation to the existing traffic load and capacity” and asks if the project “exceeds the capacity of the existing circulation system.”

The possibility of moving to a standard based on the capacity of an entire system could suggest a new way to do traffic impact analysis. The City has a Traffic Phasing Ordinance so the City will continue to implement the current Level of Service (LOS) standard, but it would be possible for an agency to adopt standards to evaluate impacts in relation to the entire system capacity rather than its component parts. The change also broadens the analysis to all forms of circulation including pedestrian, bike paths and various forms of mass transit. Eventually, we may need capacity metrics for sidewalks, bike paths, bus lines and airports;

Appendix G XVI – Transportation/Traffic (b)

The amendment would change the question from whether or not a project exceeds an LOS standard adopted by a county congestion management agency and would simply ask whether there is a conflict with an adopted congestion management program. The amendment retains a reference to the LOS standard and it broadens its applicability to “travel demand measures or other standards.”

Mr. Christopher Calfee
August 12, 2009
Page 4 of 4

This broadens the analysis from certain regional intersections to any policy related to transportation a county congestion management agency might have or adopt in the future. This change introduces ambiguity by adding new considerations such as "travel demand measures" and "other standards";

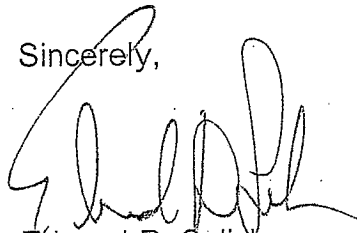
Appendix G XVI – Transportation/Traffic (f)

The amendment eliminates the question "would the project result in inadequate parking capacity?"

There is research to support both the retention and removal of parking capacity or off-street parking requirements depending upon the circumstances of a project within a particular setting. The City agrees with this change as it is unnecessary given that the Municipal Code adequately addresses parking requirements, including when parking waivers are considerable.

In summary, the City is in support of finding ways to reduce GHG emissions, but established thresholds of significance need to be set in order to perform a sufficient environmental review.

Sincerely,

A handwritten signature in black ink, appearing to read "Ed Selich", written over a horizontal line.

Edward D. Selich
Mayor